

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

vs.

WALKER RIVER IRRIGATION DISTRICT,
a corporation, et al.,

Defendants.

Case No.: 3:73-cv-00127-MMD-WGC

MINUTES OF PROCEEDINGS

December 19, 2018

PRESENT: THE HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE

DEPUTY CLERK: Katie Lynn Ogden REPORTER: Liberty Court Recorder

COUNSEL PRESENT: Andrew Guss Guarino, Tyler J. Eastman, David Negri,
Gordon H. DePaoli, Dale Ferguson, Wes Williams Jr., Therese A. Ure, Bryan L. Stockton,
Christopher Mixon, Nhu Q. Nguyen, Joshua Woodbury and James T. Fousekis (Pro Se)

COUNSEL APPEARING BY PHONE: Brad Johnston, Roderick E. Walston,
Simeon M. Herskovits, Iris Thornton, and Jason Canger

MINUTES OF PROCEEDINGS: Status Conference

9:09 a.m. Court convenes.

The court is in receipt of the proposed agenda (ECF No. 2418) and will follow the discussion points listed on pages 2 and 3 for today's conference. The court, however, has been made aware that a named defendant in this case, James Thomas Fousekis, is present and wishes

1 to address the court. There being no objections to allow Mr. Fousekis address the court and
2 principal parties, the court first hears from Mr. Fousekis. Mr. Fousekis makes general statements
3 regarding the case and expresses concern that the case continues to experience undue delays.

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5 The court responds to Mr. Fousekis statements and concerns.

6 The court next addresses the listed discussions items from the agenda.

7 The court and counsel address agenda items 1 and 2 simultaneously.

8 **Agenda item 1:** The parties' *Response to Court's Request for a Proposed Order*
9 (ECF No. 2404) and *Proposed Order Amending Superseding Service*
10 *Order (ECF No. 2100)* (ECF No. 2404-1).

11 **Agenda item 2:** The potential amendment of the Court's Superseding Order
12 (ECF No. 2100) to require **all** unrepresented parties to consent to receive
13 service by e-mail notification and to eliminate service by postcard notice
upon unrepresented parties.

14 The court and counsel review the "Proposed Order Amending the Superseding Service
15 Order (ECF 2100)" (ECF No. 2404-1). The court and counsel address the pros and cons of
16 eliminating the post card service concerning the current non-appearing parties and unrepresented
17 parties.

18 After hearing from counsel and considering the language that would be inserted in the
19 current Superseding Service Order (ECF No. 2100), the court directs the principal parties to
20 meet and confer and draft an Amended Superseding Service Order that embraces the concept that
21 service will be effected by either notification via CM/ECF System or by email service for those
22 parties who are unrepresented; otherwise, if a party chooses not to receive service by either of
23 those mechanisms, the individual will be required to check the public website to ascertain the
24 most recent case status. Ultimately, the modified language should indicate that the post card
25 service will be eliminated. An exception to this modification to the service order, however, is
26 the amended order should clarify that any order entered by the court pertaining directly to a non-
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appearing party and/or unrepresented party will be served the order itself by mail.

IT IS ORDERED that the proposed Amended Superseding Service Order shall be filed with the court no later than **Friday, 1/11/2019**.

IT IS FURTHER ORDERED that the proposed Amended Superseding Service Order shall be identified as an agenda discussion item for the next status conference.

Agenda Item 3: Minute Orders 2407 through 2412 – concerning the need for substitution of parties as required by FRCP 25.

Defense counsel Gordon H. DePaoli advises the court that counsel for the principal parties have been actively working on preparing recommendations concerning the need for substitution of parties as required by FRCP 25. During their discussions, Mr. DePaoli indicates counsel concluded that this subject has been addressed by the court in its order entered on 8/26/2011, at ECF No. 1650. Therefore, it was the intentions of counsel to recommend the court follow the directives outlined in the Amended Order Concerning Service Issues Pertaining to Defendants Who Have Been Served (ECF No. 1650). Mr. Guarino concurs with the statements made by Mr. DePaoli and adds that counsel recognize the court recently entered its orders regarding substitution of parties and do not seek the court to reconsider those orders, but to follow the procedures outlined in Judge Leavitt's order (ECF No. 1650) for future similar motions or notices pertaining to the substitution of a party. Mr. Herskovits further suggests the court consider sending notification to the parties relative to minute orders entered by the court at ECF Nos. 2408, 2409, 2410 and 2411, of Judge Leavitt's order (ECF No. 1650) so the party can make the determination to follow or not follow the protocol for substituting a party in this case and to overall put the party on notice of the court's order regarding substitution (ECF No. 1650).

The court takes a brief recess and reviews Judge Leavitt's order (ECF No. 1650).

1 additional time to complete the proposed order before the court take the document under review
2 and consideration.

3 The court and counsel generally discuss the proposed scheduling order and discovery
4 plan and what discovery the parties anticipate undertaking. Mr. Guarino, Mr. Williams,
5 Mr. DePaoli and Mr. Stockton address the court regarding anticipated discovery that will be
6 undertaken by the respective parties. Mr. Fousekis addresses the court and recommends that the
7 principal parties discuss the prospects of scheduling a settlement conference in this case.
8 Overall, counsel confirm written discovery, expert reports and depositions will be undertaken
9 during the discovery phase of this case. Mr. Guarino further indicates the Government
10 anticipates filing dispositive motions.
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12 After hearing from counsel, the court agrees with the suggestion to allow additional time
13 for the principal parties to submit a completed proposed scheduling order and discovery plan.
14 Additionally, the court directs the proposed order contemplate a time in which the parties will
15 meet and confer to discuss the prospects of scheduling a settlement conference. The court
16 indicates the final proposed order will, therefore, be discussed at the next status conference.
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18 IT IS ORDERED that the principal parties shall submit the Proposed Scheduling Order
19 and Discovery Plan no later than **Friday, 1/11/2019**.
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21 **Agenda Item 5:** Such additional issues that may be identified subsequent to the filing of
22 this agenda and/or at the status conference.

23 No additional issues discussed during today's conference.

24 **Agenda Item 6:** Based upon the discussion of Agenda Items 1 through 5, determination of
25 the next steps to be taken with respect to the remaining litigation.

26 The court will discuss the anticipated proposed Amended Superseding as addressed in
27 Agenda Items 1, 2 and also continue discussions as to Agenda Items 3 and 4 at the
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1 next status conference.

2 **Agenda Item 7:** Confirmation of next status conference and/or informal meetings.

3 IT IS ORDERED that a status conference is scheduled for **Wednesday, 1/30/2019, at**
4 **10:00 a.m.**, in Reno Courtroom 2 before United States Magistrate Judge William G. Cobb.

5 Although counsel for the principal parties are encouraged to attend the conference in
6 person, counsel who are located outside of the Reno, Nevada area may participate telephonically.
7 Out of town counsel shall dial **1-877-873-8017**, enter the access code **3416460**, and enter the
8 security code **13019**, approximately ten (10) minutes prior to the hearing.
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10 There being no additional matters to address at this time, court adjourns at 11:32 a.m.
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12 DEBRA K. KEMPI, CLERK OF COURT

13 By: _____/s/_____
14 Katie Lynn Ogden, Deputy Clerk
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